



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/05098/2018
HU/05570/2018

THE IMMIGRATION ACTS

Heard at Field House
On 30 January 2019

Decision & Reasons Promulgated
On 25 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RAKESH KUMAR PRADIPKUMAR SONI
URVI RAKESHKUMAR SONI

Respondents

Representation:

For the Appellant: Mr S. Walker, Home Office Presenting Officer
For the Respondents: Miss M. Malhotra, Counsel instructed by Sri Venkateshwara
Solicitors

DECISION AND REASONS

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Miles promulgated after a hearing on 25 September 2018.

2. I shall refer to Mr Soni as “the appellant” as he was in the First-tier Tribunal. The appellant is a citizen of India born on 8 July 1984.
3. It was said by the Secretary of State that in an earlier application he had misstated his earnings to a significant extent and the Secretary of State relied upon that as grounds for refusing a subsequent application for further leave to remain.
4. At the hearing before the First-tier Tribunal Judge, the appellant was represented by Miss Malhotra of Counsel and she appeared before me this morning.
5. There was an issue as to whether the appellant was acting dishonestly in the returns that he made to HMRC. In support of his case the judge heard the evidence from the appellant’s accountant, Mr Patel, and looked at accounts which had been submitted, both to Companies House and HMRC on time. The information from Companies House was that the appellant had recorded a dividend of £17,300 referred to by Mr Patel in his statement. Mr Malhotra tells me, and I accept, that this document, the return from Companies House, was before the Tribunal in electronic form which was provided to the judge to see. What the judge then records in paragraph 16 is this:-

“In the light of the evidence from the appellant’s accountant, Mr Bhavin Patel, supported by the confirmation from the records of Companies House that the total dividend of £17300 also referred to by Mr Patel in his statement, had been declared to Companies House, together with the fact that in this case the burden of establishing the appellant’s unacceptable conduct lies on the respondent on the balance of probabilities. I indicated to Mr Entecott that I was unable to see how I could reach such a conclusion although I was prepared to give him an opportunity to make further submissions to try and dissuade me from that course. Mr Entecott did not wish to address me further”.
6. It is quite clear that the information to Companies House is entirely different from the information which was provided by the appellant to HMRC. In particular, the documentation provided to HMRC is for the express purpose of calculating the income tax which is payable. In contrast the records to Companies House have no direct fiscal consequence. Consequently, whatever is said to Companies House has no direct bearing on whether the appellant was acting dishonestly in relation to his return that he made to HMRC and that was the material issue. Consequently, although the evidence of Companies House was a part of the picture, it was by no means the whole picture. However, this point when it was available for Mr Entecott to make to the judge in response to his comments was a response that he expressly did *not* make. Indeed, Miss Malhotra tells me that the judge’s record of what occurred in paragraph 16 of the determination is an accurate one. The only conclusion I can properly draw from this is that Mr Entecott was conceding the point that the judge could not reasonably conclude other than that the appellant was acting honestly. In consequence, the judge went on in reliance upon what Mr Entecott had apparently conceded to find for the appellant.
7. In these circumstances, there was no material error on the part of the judge. It was open to Mr Entecott to explain that there was a requirement for a freestanding consideration of the tax returns to HMRC and it was that the judge was to comment

upon, but he did not do that. The judge therefore was under no obligation to do so himself. For these reasons I dismiss the appeal of the Secretary of State.

DECISION

- (i) The appeal of the Secretary of State against the decision of the First-tier Tribunal Judge is dismissed.
- (ii) The determination of the First-tier Tribunal Judge shall stand.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
20 March 2019